

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

POLICARPIO BARTOLON DIAZ,

Defendant and Appellant.

2d Crim. No. B276003
(Super. Ct. No. 2014002727)
(Ventura County)

Policarpio Bartolon Diaz appeals a judgment of conviction after he expressly waived his constitutional rights and pleaded guilty to second degree murder. (Pen. Code, §§ 187, subd. (a), 189.)¹ The trial court sentenced Diaz to an indeterminate term of 15 years to life. The court also imposed a \$10,000 restitution fine and a \$10,000 parole revocation restitution fine (suspended); ordered victim restitution; and awarded Diaz 850 days of presentence custody credit. (*Id.*, §§ 1202.4, subds. (b) & (f), 1202.45.) On the prosecutor's motion, the court dismissed the remaining charged counts.

¹ All further statutory references are to the Penal Code unless otherwise stated.

According to evidence presented at the preliminary examination, at approximately 2:00 a.m. on January 26, 2014, Gerard Garcia and Robert Patterson rode their bicycles in the bicycle lane of Rose Avenue in Oxnard. After consuming alcoholic beverages, Diaz drove along Rose Avenue and into the bicycle lane. He struck Garcia's bicycle, causing Garcia to fly onto the hood of Diaz's vehicle. Garcia then fell onto the roadway and died at the scene. Diaz continued driving with Garcia's bicycle lodged underneath his vehicle. When arrested several hours later, Diaz had a blood alcohol content of 0.22 percent. Diaz had suffered a prior conviction for driving with a blood alcohol content of 0.08 percent or more. (Veh. Code, § 23152, subd. (b).)

We appointed counsel to represent Diaz in this appeal. After counsel's examination of the record, he filed an opening brief raising no issues.

On November 14, 2016, we advised Diaz by mail that he had 30 days within which to personally submit any contentions or issues that he wished to raise on appeal. We have not received a response.

We have reviewed the entire record and are satisfied that Diaz's attorney has fully complied with his responsibilities and that no arguable issue exists. (*People v. Wende* (1979) 25 Cal.3d 436, 441.)

The judgment is affirmed.

NOT TO BE PUBLISHED.

GILBERT, P. J.

We concur:

PERREN, J.

TANGEMAN, J.

Jeffrey G. Bennett, Judge

Superior Court County of Ventura

Richard B. Lennon, under appointment by the Court of
Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.